

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	MB Docket No. 14-82
)	
PATRICK SULLIVAN)	FRN 0003749041, 0006119796,
(Assignor))	0006149843, 0017196064
)	
and)	Facility ID No. 146162
)	
LAKE BROADCASTING, INC.)	File No. BALFT-20120523ABY
(Assignee))	
)	
Application for Consent to Assignment of)	
License of FM Translator Station W238CE,)	
Montgomery, Alabama)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION TO LAKE BROADCASTING, INC.'S
MOTION TO REJECT EXHIBITS, HALT DEPOSITIONS, AND REQUIRE A NEW
EVALUATION OF MICHAEL RICE OR GRANT SUMMARY DECISION**

1. On April 14, 2016, Lake Broadcasting, Inc. (Lake) filed a Motion to Reject Exhibits, Halt Depositions, and Require a New Evaluation of Michael Rice or Grant Summary Decision (Motion).¹ For the reasons set forth below, the Chief, Enforcement Bureau (Bureau), by his attorneys, opposes this Motion.

2. In accordance with the Presiding Judge's request for a Status Report, counsel for the Bureau and Lake finalized dates for the depositions of Mr. Rice and the parties' fact and expert witnesses for May 17 and 18, 2016.² Counsel for the parties also discussed a possible close of

¹ See Lake's Motion To Reject Exhibits, Halt Depositions, And Require A New Evaluation Of Michael Rice Or Grant Summary Decision, filed on April 14, 2016.

² See Order, FCC 16M-15 (ALJ, rel. Apr. 6, 2016) (requiring confirmation that the Bureau's expert conducted the interview ordered by the Presiding Judge, the scheduling of her deposition and for the parties to provide

discovery deadline and a tentative hearing schedule. Barely a week after these deposition dates had been confirmed and these details discussed, Lake filed the instant Motion, which, if granted, would require that the Presiding Judge reset the clock for discovery to nearly the beginning of the hearing process, ignore significant Bureau expenditures of time and money, and exclude competent and necessary evidence from the case. In essence, this case would come to a screeching halt.

3. Specifically, Lake's Motion requests that the Presiding Judge: (i) reject the Bureau's expert psychologist's report; (ii) exclude the sworn statement of Tammy Gremminger, the Missouri Department of Corrections Officer in charge of Mr. Rice's case that was submitted by the Bureau; (iii) exclude records from the Missouri Department of Corrections concerning Mr. Rice's case; (iv) disqualify the Bureau's licensed medical expert Dr. Kimberly Weitzl, from testifying; (v) disqualify Ms. Gremminger from testifying; and (vi) require the Bureau to hire a new expert at additional cost to perform a new psychological examination of Mr. Rice.³ In addition, Lake's Motion also requests that the Presiding Judge halt the taking of the scheduled depositions, or in the alternative, grant summary decision in Lake's favor on all issues designated in the Hearing Designation Order.⁴ Lake's Motion does not provide any legal authority for the sweeping actions it requests. Rather, it would appear that Lake's Motion is nothing more than a tactic to delay this case in the face of the Bureau's compelling evidence on the issues.

4. In its Motion, Lake suggests that the expert report provided by the Bureau's medical expert, Dr. Weitzl, is both biased and incomplete.⁵ This Motion represents the second time that

"information regarding the state of discovery, estimated times for completing discovery, as well as estimated dates for commencing and concluding the hearing.").

³ See Motion at 2-4, ¶¶ 2-6.

⁴ See *id.* at 4-5, ¶ 7. See also *In the matter of Patrick Sullivan et al.*, MB Dkt. 14-82, Hearing Designation Order, 29 FCC Rcd 5421 (MB 2014) (HDO).

⁵ See, e.g., Motion at 3-4, ¶ 5.

Lake has attempted to impeach Dr. Weitzl's credibility on the basis of vague and unsubstantiated innuendo.⁶ As it did previously, Lake again primarily relies on *Smego v. Weitzl*, 2013 U.S. Dist. LEXIS 66796 (May 10, 2013), as the sole basis for its challenge of Dr. Weitzl. Therein, a *pro se* petitioner alleged (unsuccessfully) that Dr. Weitzl had presented a biased report. The Presiding Judge dismissed Lake's previous attempt.⁷ For the same reasons, Lake's allegations in the instant Motion should be dismissed.

5. Lake also challenges the fact that Dr. Weitzl's report appears to focus on Mr. Rice's past history and his "mental state."⁸ The Motion erroneously asserts that, based on Lake's reading of the HDO, Mr. Rice's "mental state" is not at issue.⁹ Lake's argument is undercut by its own admission in the Motion that "the Presiding Judge allowed Dr. Weitzl to delve into Mr. Rice's mental state as part of her rehabilitation analyses."¹⁰ Moreover, the Presiding Judge's *Order* granting the Bureau's request for Dr. Weitzl to examine Mr. Rice states that "Mr. Rice's reflections on his prior criminal conduct and the steps he takes to avoid engaging in that conduct again are all clearly relevant to determining whether Mr. Rice is now sufficiently rehabilitated to be a Commission licensee."¹¹ Accordingly, Dr. Weitzl's examination and analysis are proper and any question regarding their focus goes to the weight to be afforded to her report, not to its

⁶ See, e.g., Lake's Motion For Protective Order Pursuant to Section 1.313 of the Commission's Rules, filed August 19, 2015 (Motion For Protective Order).

⁷ See *Order*, FCC 15M-30 (ALJ, rel. Nov. 23, 2015). In denying the Motion, the Presiding Judge stated that Lake had presented no basis for its assertions regarding Dr. Weitzl's purported bias.

⁸ See, e.g., Motion at 3, ¶ 4.

⁹ See *id.*

¹⁰ *Id.*; see also *Order*, FCC 15M-26 (ALJ, rel. Aug. 4, 2015). In fact, in granting the Bureau's Motion to Permit Examination by Expert Psychologist "unconditionally," the Presiding Judge stated, "Lake opened the door to the examination of Mr. Rice's mental state when it asserted that Mr. Rice's untreated mental illnesses and substance abuse were responsible for the conduct that led to his incarceration..." *Id.*

¹¹ *Order*, FCC 15M-26, at 2.

admissibility.¹² The Bureau believes that at hearing, the Presiding Judge will find that Dr. Weitzl's report and testimony represent an unbiased expert opinion by a licensed and well-regarded risk assessor from Mr. Rice's home community.¹³

6. Dr. Weitzl's report and the other evidence that Lake seeks to exclude by its Motion, including the statement by Missouri Department of Corrections Officer Gremminger, are probative of an essential element in the Presiding Judge's determination of Mr. Rice's rehabilitation and qualifications to be a Commission licensee. In *Titus*,¹⁴ the Commission determined that risk assessments made by local authorities are an important factor in determining whether a convicted sex offender has been sufficiently rehabilitated to again be a Commission licensee. According to the Commission, "[i]t is especially appropriate to defer to state judgments about sex offenders, in view of the fact that many states treat sex offenders differently from other felons."¹⁵ In this case, local law enforcement authorities involved in Mr. Rice's *original prosecution* in his Missouri State court case recommended Dr. Weitzl to the Bureau as the best expert, one often relied on by the State, to render a sex offender risk assessment.¹⁶ Dr. Weitzl is licensed locally to perform this type of assessment.¹⁷

¹² See, e.g., *In the Matters of Amendment of Section 3.606 of the Commissions Rules & Regulations Amendment of the Commission's Rules, Regulations & Eng'g Standards Concerning the Television Broad. Serv. Utilization of Frequencies in the Band 470 to 890 Mcs. for Television Broad.*, 41 F.C.C. 148, 567 (1952) (objections to credentials of expert witness, motivation etc. go to weight of evidence not admissibility).

¹³ See Curriculum Vitae of Kimberly Weitzl, PsyD etc., attached hereto as Exhibit A.

¹⁴ See *David Titus*, 29 FCC Rcd 14066 (2014). The Bureau notes that Mr. Titus filed a Petition for Reconsideration of the Titus Decision on December 4, 2014. This Petition is pending before the Commission.

¹⁵ *Titus*, 29 FCC Rcd at 14073, ¶ 16.

¹⁶ In the course of discovery, the Bureau contacted the same prosecutor who had handled Mr. Rice's original conviction in Missouri State court and requested information on how local law enforcement authorities would assess the current risk of a registered sex offender. The prosecutor directed Bureau counsel to Dr. Kimberly Weitzl, noting that the State of Missouri often relied on Dr. Weitzl for a fair and thorough risk assessment in sex offender cases. Bureau counsel were also directed to the Missouri Department of Corrections, and Ms. Tammy Gremminger, for her review and for copies of Mr. Rice's records located there.

¹⁷ See, *supra*, at n. 14. The Bureau provided a copy of Dr. Weitzl's report to the Presiding Judge by email. See Email dated April 15, 2016.

7. Local Missouri State authorities also suggested that the Bureau contact Ms. Gremminger, a local probation and parole Officer in the Missouri Department of Corrections who helped oversee Mr. Rice's reentry into the community, and who is employed to perform sex offender risk assessments as a part of her regular duties.¹⁸ She worked with Mr. Rice when he was released on parole and agreed to aid the Bureau in assessing Mr. Rice's current risk of re-offense in the local community. In its Motion, Lake provides only its own uncorroborated supposition challenging the "accuracy" of Ms. Gremminger's statement to support its request that the Presiding Judge exclude Ms. Gremminger's statement and disqualify her from testifying.¹⁹ This is clearly an insufficient basis to exclude her report or testimony. Under the Commission's direction in *Titus*, the Presiding Judge should afford significant deference to the testimony and opinions of both Dr. Weitzl and Ms. Gremminger.²⁰

8. Finally, there is no basis for Lake's request that, should the Presiding Judge refuse to exclude Dr. Weitzl's expert report, Ms. Gremminger's statement, and their testimony, he should "in the alternative" grant summary decision in its favor on all issues encompassed in the HDO.²¹ Pursuant to Section 1.251 of the Commission's rules, "[a]ny party to an adjudicatory proceeding may move for summary decision of all or any of the issues set for hearing."²² However, "[t]he party filing the motion may not rest upon mere allegations or denials but must show, by affidavit or by other materials subject to consideration by the presiding officer, that there is no genuine issue of material fact for determination at the hearing."²³ Here, Lake has offered no such

¹⁸ The Bureau provided a copy of Ms. Gremminger's sworn statement to the Presiding Judge by email. See Email dated April 15, 2016.

¹⁹ See, e.g., Motion at 2, ¶ 3.

²⁰ The Bureau notes that both witnesses separately find that the risk presented by Michael Rice to re-offend in his community is high.

²¹ See Motion at 4, ¶ 7.

²² 47 C.F.R. § 1.251(a).

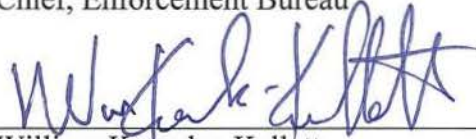
²³ *Id.*

affidavit or materials. Indeed, it is clear from the Motion itself that there remain significant facts in dispute that would preclude a summary decision in this matter.

9. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge deny Lake's Motion.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



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April 25, 2015

CERTIFICATE OF SERVICE

William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 25th day of April, 2016, sent by first class United States mail and by email copies of the foregoing ENFORCEMENT BUREAU'S OPPOSITION TO LAKE BROADCASTING, INC.'S MOTION TO REJECT EXHIBITS, HALT DEPOSITIONS, AND REQUIRE A NEW EVALUATION OF MICHAEL RICE OR GRANT SUMMARY DECISION to:

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And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
Federal Communications Commission
445 12th Street, S.W., Room 1-C861
Washington, DC 20554



William Knowles-Kellett